16:Fielding Hall G-3 (1885-1890) 1898 AP1 Burma
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CHAPTER VIII

CRIME AND PUNISHMENT

'Overcome anger by kindness, evil by good.'
Dammapada.

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NOT very many years ago an officer in Rangoon lost some currency notes. He had placed them upon his table overnight, and in the morning they were gone. The amount was not large. It was, if I remember rightly, thirty rupees; but the loss annoyed him, and as all search and inquiry proved futile, he put the matter in the hands of the police.

And before long — the very next day — the possession of the notes was traced to the officer's Burman servant, who looked after his clothes and attended on him at table. The boy was caught in the act of trying to change one of the notes. He was arrested, and he confessed. He was very hard up, he said, and his sister had written asking him to help her. He could not do so, and he was troubling himself about the matter early that morning while tidying the room, and he saw the notes on the table, and so he took them. It was a sudden temptation, and he fell. When the officer learnt

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all this, he would, I think, have withdrawn from the prosecution and forgiven the boy; but it was too late. In our English law theft is not compoundable. A complaint of theft once made must be proved or disproved; the accused must be tried before a magistrate. There is no alternative. So the lad—he was only a lad—was sent up before the magistrate, and he again pleaded guilty, and his master asked that the punishment might be light. The boy, he said, was an honest boy, and had yielded to a sudden temptation. He, the master, had no desire to press the charge, but the reverse. He would never have come to court at all if he could have withdrawn from the charge. Therefore he asked that the magistrate would consider all this, and be lenient.

But the magistrate did not see matters in the same light at all. He would consider his judgment and deliver it later on.

When he came into court again and read the judgment he had prepared, he said that he was unable to treat the case leniently. There were many such cases, he said. It was becoming quite common for servants to steal their employers' things, and they generally escaped. It was a serious matter, and he felt himself obliged to make an example of such as were convicted, to be a warning to others. So the boy was sentenced to six months' rigorous imprisonment; and his master went home, and before long had forgotten all about it.

But one day, as he was sitting in his veranda reading before breakfast, a lad came quickly up the stairs and into the veranda, and knelt down before

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him. It was the servant. As soon as he was released from gaol, he went straight to his old master, straight to the veranda where he was sure he would be sitting at that hour, and begged to be taken back again into his service. He was quite pleased, and sure that his master would be equally pleased, at seeing him again, and he took it almost as a matter of course that he would be reinstated.

But the master doubted.

'How can I take you back again?' he said. 'You have been in gaol.'

'But,' said the boy, 'I did very well in gaol. I became a warder with a cap white on one side and yellow on the other. Let the thakin ask.'

Still the officer doubted.

'I cannot take you back,' he repeated. 'You stole my money, and you have been in prison. I could not have you as a servant again.'

'Yes,' admitted the boy, 'I stole the thakin's money, but I have been in prison for it a long time —six months. Surely that is all forgotten now. I stole; I have been in gaol—that is the end of it.'

'No,' answered the master, 'unfortunately, your having been in gaol only makes matters much worse. I could forgive the theft, but the being in gaol—how can I forgive that?'

And the boy could not understand.

'If I have stolen, I have been in gaol for it. That is wiped out now,' he said again and again, till at last he went away in sore trouble of mind, for he could not understand his master, nor could his master understand him.

Each had his own idea of what was law, and

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685 671 196 what was justice, and what was punishment. To the Burman all these words had one set of meanings; to the Englishman they had another, a very different one. And each of them took his ideas from his religion. To all men the law here on earth is but a reflection of the heavenly law; the judge is the representative of his god. The justice of the court should be as the justice of heaven. Many nations have imagined their law to be heaven-given, to be inspired with the very breath of the Creator of the world. Other nations have derived their laws elsewhere. But this is of little account, for to the one, as to the other, the laws are a reflection of the religion.

681 671 779 196 And therefore on a man's religion depends all his views of law and justice, his understanding of the word 'punishment,' his idea of how sin should be treated. And it was because of their different religions, because their religions differed so greatly on these points as to be almost opposed, that the English officer and his Burman servant failed to understand each other.

For to the Englishman punishment was a degradation. It seemed to him far more disgraceful that his servant should have been in gaol than that he should have committed theft. The theft he was ready to forgive, the punishment he could not. Punishment to him meant revenge. It is the revenge of an outraged and injured morality. The sinner had insulted the law, and therefore the law was to make him suffer. He was to be frightened into not doing it again. That is the idea. He was to be afraid of receiving punishment. And

21: Htin Aung E-5 (ca. 1930) 1937 AP1 Burma
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SCENE 7

OUTSIDE THE PALACE-WALLS.

Enter KING *on one side.*

KING. Because I am the eldest son, I have ascended the throne of my father. I am determined to follow the tradition of my dynasty, and I will rule this kingdom with honour, flying the banner of justice and law. However, I do not know what the men and women of my city think. Do they praise me loudly? Or do they whisper my failings? Many events have happened since I was crowned king only this morning. I must know the opinion of my people. Therefore, I have come out of the palace, disguised as a poor labourer, so that I may wander in my city and listen to my people's gossip.

[*Enter* PARPAHEIN *on the other side.*]

PARPAHEIN. When I come to think of it, he is the ruler of this mighty realm. Still, my turn will come, and I shall be able to stand against his might. . . . Well, I suppose I must dare. I am alone, I am only a young prince. So what does it matter if I die? And if I live! I will be as sharp as a thorn, my glory will be as pointed as a spear. . . . I have been tattooed with magic charms; I now repeat the magic words to myself. [*A pause.*] Now I will jump and climb this wall. Steady on, my prince!

KING. Ah, as I walk disguised as a poor man, I see before me a nightman, a suspicious-looking person. He watches the palace-walls, and the palace drum has just struck the hour of midnight. He cannot be a very pure and law-abiding person. I will pretend that I do not see him. Hush! I will glance slyly and watch his movements.

PARPAHEIN. The time has come, the drum has struck the hour. I must scale the walls quickly and steal the magic weapons. This reminds me of the famous robber hero Ngatetpya, who raided even the palace in the kingdom of Sagaing.[1] I will dare as he dared. I am

[1] Sagaing, one of the many little kingdoms that came into being after the fall of Pagan, flourished from 1315 to 1364. Ngatetpya was a great philanthropist and built many monasteries and pagodas, which he always announced to have been 'built by public charity'. At night, disguised, he raided the houses of the wealthy, including the palace itself. He was not even suspected for the robberies until one night he met the king disguised as a robber. Ngatetpya asked the king to be his lieutenant, and together they raided many houses. They parted before dawn, but the king had by then recognized Ngatetpya. He was brought to trial the next day. The people, learning that the daring robberies were the work of one man, single-handed and unaided until he

178 Since those remote times, the Burmese customary law has
671 developed naturally, side by side with the growth and development of Burmese society. The Burmese have no great national code of laws gathered and authorized by a powerful king, no great charter forced from an unwilling king, no great statute passed by a national assembly fighting against tyranny, but nonetheless the Burmese customary law shows a conception of justice and a love of personal liberty in which every Burmese must take pride.

671 To the Burmese, before the partial introduction of the
643 English legal system, law meant civil law. To them, civil law was purely customary, and besides custom, there could be no other source of law. The idea of legislation by a parliament or a congress, or by executive order of the king was unfamiliar to the Burmese. In English common law, the king could do no
● [685 wrong, and thus he was above the law. But with the Burmese,
694] the king himself was not exempt from the operation of the civil law, and the king was often the defendant in civil suits, usually for wrongful seizure of land. Admittedly the king was above his subjects, and he had the right to levy taxes in service or in kind, but he was also under a duty to give protection to the people. To protect the people and to preserve the peace, the king must prevent wrong-doing and punish wrong-doers, and it was for the king to proclaim which acts were wrongs from the point of view of public peace. Thus, at the beginning of each reign, the king proclaimed his list of crimes, and the punishments he would mete out to those who were found guilty of those crimes.

671 The list of crimes varied with each king, but the usual
681 crimes were offenses against the state, murder, robbery, theft, rape, and serious defamation. The usual penalties were whipping, confinement in irons, maiming, banishment, and death, with or without forfeiture to the king's treasury of the of-
[684] fender's possessions. In the eighteenth century, adultery was added to the list of crimes, with the punishment of whipping for both the woman and her paramour, and proclamation of their guilt by beat of drums and gongs. In the nineteenth